IN THE

Supreme Court of the United States

October Term, 1955

No. 587

THE BOARD OF TRUSTEES OF THE UNIVERSITY OF NORTH CAROLINA; ARCH T. ALLEN, Secretary to the Board of Trustees of the University of North Carolina; HARRIS PURKS, Acting President of the University of North Carolina; LEE ROY WELLS ARMSTRONG, Director of Admissions of the University of North Carolina; and the UNIVERSITY OF NORTH CAROLINA, a body incorporate,

Appellants,

v.

LEROY BENJAMIN FRASIER, JR., and RALPH KENNEDY FRASIER, Minors, by their next friends, LEROY BENJAMIN FRASIER and wife, OZIEBEL KENNEDY FRASIER; and JOHN LEWIS BRANDON, a Minor, by his next friends, WILLIAM BELL and wife, ELDORA BELL,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MOTION TO AFFIRM

Pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, appellees move that the judgment and decree of the court below be affirmed on the ground that the two (2) questions raised in this appeal are without substance in law or fact and that the judgment of the court below is clearly correct and in accord with the decisions of this Court.

Statement

LeRoy B. Frasier, Jr., Ralph A. Frasier, and John L. Brandon, Negro youths of Durham, North Carolina, are graduates of a high school in Durham, North Carolina, maintained by the state for the education of its youth. The youths applied to the officers of the University of North Carolina in April, 1955 for admission to the Undergraduate Department of the University of North Carolina. The University officials rejected their applications, advising them that, under the rules governing the University, Negroes were not accepted in the Undergraduate Department of the University.

The refusal of the governing body of the University of North Carolina to accept the appellees was based upon two orders of the Board of Trustees of the University of North Carolina as herein set forth:

Order of April 4, 1951:

> "In all cases of applications for admission by members of racial groups, other than the white race, to the professional or graduate schools when such schools are not provided by and in the State of North Carolina for such racial groups, the applications shall be processed without regard to color or race, as required by authoritative judicial interpretation of the Constitution of the United States, which is the Supreme law of our State as well as of the Nation, and the applicant accepted or rejected in accordance with the approved rules and standards of admission for the particular school."

Order of May 23, 1955:

> "The State of North Carolina having spent millions of dollars in furnishing adequate and equal educa-

> tional facilities in the undergraduate departments of its institutions of higher learning for all races, it is HEREBY DECLARED to be the policy of the Board of Trustees of the consolidated University of North Carolina that applications of Negroes to the undergraduate schools of the three branches of the consolidated University be not accepted."

Thereupon, the appellees brought suit in the United States District Court for the Middle District of North Carolina, asserting that the refusal to accept them, or to receive their applications, was a violation of their rights and privileges, as secured by the Constitution of the United States. They sought a judgment declaratory of their rights and a mandatory injunction compelling the University to accept their applications. The judgment was entered on September 21, 1955.

Argument

1. There can be little doubt but that this case was correctly decided by the court below, and that this appeal raises no issues of substance. This Court has settled the question of the right of a State to segregate persons solely because of race in the field of public education. *Brown* v. *Board of Education*, 347 U. S. 483 and *Bolling* v. *Sharpe*, 347 U. S. 497. Since that decision, this Court has made it evident that the constitutional principle laid down in the *Brown* case was not a principle designed to meet a special situation only, but was an announcement of a constitutional doctrine which was to guide American courts in decisions concerning the effect of the Fourteenth Amendment with respect to questions of racial discrimination and segregation

in general. See *Dawson* v. *Mayor,* 220 F. 2d 386 (CA 4th 1955), aff'd, — U. S. —, 100 L. ed. (Adv. p. 75); *Holmes* v. *City of Atlanta,* 125 F. Supp. 290, 223 F. 2d 98, reversed, — U. S. —, 100 L. ed. (Adv. p. 76). See also *National Association for the Advancement of Colored People* v. *St. Louis-San Francisco Ry. Co.,* — I. C. C. —, decided November 7, 1955 and *Keyes* v. *Carolina Coach Co.,* — I. C. C. —, decided November 7, 1955.

2. Appellants seek to becloud the issues here involved by questioning the sweep of the decision below. That argument, we submit, is specious and is completely answered in the opinion review of which is sought here. All that was decided is that the University of North Carolina may not hereafter use race as a criterion in determining the eligibility of persons to attend the University of North Carolina, and that it must admit Negroes to that institution by determining their qualifications for admission on the same basis as that of other persons. This does not mean that the University must admit Negroes who do not possess the qualifications which it requires of other students. All that it does mean is that the University must not refuse to admit a qualified person merely because he is a Negro. This has, in fact, been the reach and import of all of the decisions of this Court which have struck down racial discrimination and segregation as being violative of the Fourteenth Amendment. See *Sipuel* v. *Oklahoma,* 332 U. S. 631; *Sweatt* v. *Painter,* 339 U. S. 629; *McLaurin* v. *Oklahoma State Regents,* 339 U. S. 637.

CONCLUSION

Wherefore, for the reasons hereinabove indicated, it is respectfully submitted, the judgment of the Court of Appeals is correct and this motion to affirm should be granted.

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